

NINETY-NINTH LEGISLATURE

FIRST SESSION

LEGISLATIVE RESOLUTION 98

Introduced by Schrock, 38; Aguilar, 35; Baker, 44; Beutler, 28; Bourne, 8; Burling, 33; Byars, 30; Chambers, 11; Combs, 32; Connealy, 16; Cornett, 45; Cudaback, 36; Flood, 19; Howard, 9; Janssen, 15; Johnson, 37; Kopplin, 3; Kruse, 13; Landis, 46; McDonald, 41; Mines, 18; Pahls, 31; Preister, 5; Raikes, 25; Schimek, 27; Stuhr, 24; Stuthman, 22; Thompson, 14; Wehrbein, 2

Read first time May 3, 2005

Committee: Executive Board

The Nebraska Accountability and Disclosure Commission (Commission) recently entered into three separate settlement agreements with David Hergert, a member of the University of Nebraska Board of Regents who was elected in November 2004. In these agreements, the Commission determined that Hergert had committed four separate violations of the state's campaign finance laws during the 2004 primary and general election periods. As a part of the settlement, Hergert has agreed to pay \$33,512.10 in civil penalties and late filing fees.

In case number 04-35 (John Gould v. David Hergert), the Commission found that Hergert violated section 49-1458, which requires a candidate committee to report late contributions within two days after receiving such contributions. Hergert acknowledged

that his committee received a \$44,000 late contribution (in the form of a loan from Hergert) on October 22, 2004, and that this contribution was not reported until November 3, 2004, well after the statutory two-day deadline. As a result of this violation, the settlement agreement requires Hergert to pay a civil penalty in the amount of \$2,000 and a late filing fee in the amount of \$4,400.

In case number 04-36 (Executive Director v. David Hergert), the Commission concluded that Hergert violated subdivision (5)(b) of section 32-1604, which requires a candidate who chooses not to abide by statutory spending limitations to file an affidavit with the Commission within five days after exceeding forty percent of his or her estimated maximum expenditure. In both the primary and general election period, Hergert elected not to abide by the applicable spending limitation. As a part of the settlement agreement, Hergert acknowledged that he exceeded forty percent of his estimate for the primary election on April 22, 2004, but failed to mail his notice to the Commission until more than two weeks later, on May 10, 2004. He also acknowledged that although he exceeded forty percent of his estimate for the general election on October 19, 2004, the Commission did not receive his notice until November 12, 2004, well after the five-day deadline had passed. As a result of these violations, Hergert agreed to pay civil penalties in the amount of \$2,000 (\$1,000 per violation).

In case number 04-43 (Chris Beutler v. David Hergert), the Commission determined that Hergert violated section 49-1446.04.

This provision prohibits a candidate committee from accepting loans in an aggregate amount representing more than fifty percent of nonloan contributions that the committee received during a specified time period. In the settlement agreement, Hergert acknowledged that his candidate committee accepted more than \$25,000 in loans that violated this restriction. As a result of the violation, Hergert agreed to pay a civil penalty in the amount of \$25,112.10. This is the largest civil penalty for a single violation assessed by the Commission since its inception.

The recitations above, as well as other potential violations, demonstrate that by delaying the disclosure of statutorily required information, Hergert and his candidate committee succeeded in undermining the purposes of Nebraska's campaign finance laws by preventing Hergert's opponents from obtaining current information and from accessing public funds to engage in a "fair fight" for the District 7 Board of Regents seat. Regardless of whether Hergert's misconduct was intentional or unintentional, the result was the same--the violations, viewed as a whole, have tainted the 2004 elections and may very well have changed the result of the elections.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature hereby calls for David Hergert to resign his seat on the Nebraska Board of Regents immediately.

2. That the Legislature hereby calls upon the Governor to

fill Mr. Hergert's vacated seat pursuant to section 32-573, pending a special election.

3. That the Legislature hereby calls for a special election, to be held in conjunction with the general election in November 2006, to fill Mr. Hergert's vacated seat.

4. That if Mr. Hergert fails to resign within sixty days of receiving notice of this resolution, the Executive Board of the Legislative Council shall meet forthwith and appoint a special committee of the Legislature to consider and recommend legislative options. The Executive Board may hire special counsel and shall finance whatever investigation is necessary to aid the special committee in reaching a proper determination. The special committee shall render its recommendations to the Executive Board by January of 2006.

5. That the Clerk of the Legislature is hereby directed to send, upon passage, a copy of this resolution, by certified mail with return receipt requested, to Mr. Hergert at his last-known address.